

CRS Report for Congress

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Airport and Airway Trust Fund Issues in the 106th Congress

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Summary

Congress concluded its debate on the airport and airway trust fund (aviation trust fund) by modifying its treatment in the budget. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21 or FAIR21)(P.L. 106-181) contains a so called “guarantee” that uses House and Senate point-of-order rules to ensure that all aviation trust fund receipts (including interest) are spent for aviation purposes on an annual basis. This provision represents a compromise in what had become a contentious debate. When the legislation was first considered in the House in 1999 it contained two separate budget options for the trust fund. The first, taking the trust fund off-budget, was contained in the passed House version of the bill. The second option, which would have created a “firewall” around aviation programs, was dropped during later committee consideration.¹ Changing the budget treatment of the trust fund was opposed by the Clinton Administration and by some Members of the House and Senate Budget and Appropriations Committees. Reauthorization legislation passed by the Senate contained no budget treatment provisions. The budget treatment provisions in AIR21 were not challenged during the FY2001 appropriations process. This report will not be updated.

The airport and airway trust fund was created by the revenue title of the Airport and Airway Development Act of 1970 (P.L. 91-258). The “aviation trust fund,” as it is also known, was established to provide funding for the federal commitment to the nation’s aviation system. The scope of the programs funded by the aviation trust fund has been expanded over time.

¹For further discussion of off-budget and “firewall” budget treatment see: U.S. Library of Congress. Congressional Research Service. *Transportation Trust Funds: Budget Treatment*. by John W. Fischer. CRS Report 98-63E and *The Transportation Equity Act for the 21st Century (TEA21) and the Federal Budget*. CRS Report 98-749E. by John W. Fischer.

Aviation Taxation

The Taxpayer Relief Act of 1997 (P.L. 105-34) made some changes in the system of taxation for the trust fund and provided for their authorization through FY2007. For aviation, the action equated to a tax increase that was expected to raise an additional \$3 billion in revenues over the first 5-year period covered by the Act.

The system of taxation imposed in 1997 relies heavily on an airline passenger ticket tax currently levied at 7.5%. A new segment tax was created — a segment is defined as a single take-off and single landing — and is currently imposed at a rate of \$2.50 per segment (this level rises to \$3 by FY2002 and is then subject to annual adjustment). Additional sources of funding for the trust fund include: a 6.25% cargo waybill tax; a \$12.40 international arrival/departure tax, and taxes on general aviation fuels (17.5 cents/gallon on jet fuel and 15 cents/gallon on gasoline). A preexisting tax of 4.3 cents/gallon imposed on all aviation fuels, including those used by airlines, was redirected to the trust fund. Finally, the new system taxes second party payments for travel awards provided by airlines at the 7.5% level. This is primarily a tax on frequent flyer awards linked to credit card and other commercial activities. Trust fund income from these sources is detailed in Table 1.

The 1997 increase in taxation was not specifically tied to aviation needs, but was rather a portion of the larger balanced budget initiative. In addition, these changes did not necessarily equate to additional funding for aviation. In fact, the balanced budget agreement linked to the Taxpayer Relief Act allowed for only a modest increase in overall transportation spending in the years covered by the agreement.

FAA Programs and Spending

The trust fund, at present, provides funding for all four of the FAA budget's major components: Operations and Maintenance (O&M), Facilities and Equipment (F&E), Research, Engineering, and Development (RE&D), and the Airport Improvement Program (AIP). The trust fund provides all funding for all but the O&M account. Funding for the O&M account is derived from both the trust fund and the U.S. Treasury general fund (issues concerning this split will be discussed later in this report).

As can be seen in Table 1, overall FAA program spending rose significantly between FY1989 and FY1999. Overall growth did moderate, and actually decline, for a period in the mid-1990s. The increases in the O&M account have been the most substantial and most consistent on a relative basis. A source of growth in spending has been the ongoing, and controversial, upgrade of the air traffic control system which began in the early 1980s and is still many years from completion. Most of this spending shows up in the F&E account, but this spending has affected other accounts as well.

Trust Fund Issues

Two philosophical views about how trust funds relate to the budget frame the current debate about the context of the trust fund as part of the federal unified budget. According to those seeking to change the budget status of the aviation trust fund the fund mechanism represents a contract with the taxpayers to spend revenues on the specific activities

identified as the purpose of the trust fund. In the view of those who support the unified budget approach, on the other hand, a dollar of federal revenue is a dollar of federal revenue. Spending decisions, therefore, need to be in the context of national rather than programmatic requirements. These competing views can be examined in the context of the two specific issues, balance and appropriate use.

The balance issue is usually the most visible of the two and drives the budget treatment debate to a large extent. By far the most contentious disagreement over trust fund spending arises because actual federal spending for trust fund programs often does not match program spending levels set in authorizing legislation, and is often below annual revenue collections for the fund. The disagreement over spending levels usually reflects the differing priorities that congressional committees face. For example, the authorizing committees with authority over transportation programs often support full funding for these programs. Budget and appropriations committees, by contrast, often view transportation spending as competing with other federal needs within a broader context of fiscal policy.

A related issue is the question of the accumulation of unexpended funds in the trust fund over time. During most of its life, as can be seen for a recent period in Table 1, the trust fund has had a large unexpended balance. There are commitments against the unexpended balances, so not all of the funds shown as unexpended are actually available at any given time. Nonetheless, the unexpended and uncommitted balances have often been quite large relative to the size of the annual federal aviation program. There are numerous additional reasons for these balances, other than a lack of spending. And many of these, such as the payment of interest on trust fund investments and the use of general funds to pay for a portion of the FAA's operating expenses are very controversial.

A temporary expiration of the trust fund in 1996 eliminated a significant portion of the unexpended balance. By all predictions, however, including the Congressional Budget Office's February 1999 baseline estimate, the trust fund's unexpended balance was expected to grow dramatically in the next few years unless there was additional spending over current levels. AIR21 has dramatically raised spending levels, but projections still indicate that a significant unexpended balance in the fund will continue to exist.

Another long-standing issue surrounding the trust fund is the appropriateness of spending trust fund revenues for FAA O&M expenses. The trust fund was established as a means of paying for federal aviation needs, which were viewed by many, but not all, of its authors as being primarily capital needs. Every presidential Administration since the trust fund was established, however, has sought additional O&M funding from the trust fund. As can be seen in Table 1, the general fund share of FAA spending has varied over time. Over the last 12 years, for example, the share has ranged from a low of 0% to a high of 47%.

Legislation considered in the 1st session of the 106th Congress (H.R. 1000, S. 82) was predicated on the maintenance of a large general fund contribution to FAA expenses. This contribution is justified on the basis of the public benefits accruing to the population in general from aviation activities. The public contribution philosophy was a part of the original trust fund concept. At issue, has been the size of the public contribution, and the more recently proposed notion that the FAA should be funded entirely by user fees.

The FAA has sponsored numerous cost-allocation studies that have provided an economic rationale for the general fund contribution by detailing an FAA cost component related to provision of services to other government agencies, such as DOD, and to the public at large.² These periodic assessments have always been somewhat controversial because there have been numerous questions about the ability of these studies to attribute specific FAA costs to specific system users and to the “public use” component identified in these studies. The public use component identified by these studies has been dropping over the three decade history of this program. The most recent of these studies shows that the public sector costs are now well below 10% of total FAA costs while the general fund contribution has remained at the higher levels shown in Table 1.

Concern about the appropriate use and balance issues has led several Members of Congress to the position that aviation is unlikely to get the support it needs as long as the trust fund is just another part of the unified federal budget. For most of the last decade attempts to change the budget treatment of the trust fund have focused on moving it off-budget. Although often discussed, and sometimes considered, the off-budget concept has never received approval in both the House and the Senate during the same Congress.

Early in the 106th Congress, aviation spending proponents turned their attention to the firewall concept in the development of H.R. 1000. During the debate leading to passage of TEA21 trust fund proponents developed a new budgetary device, the spending guarantee, better known as firewalls, to guarantee spending for highways and transit. This device was seen by many as having essentially the same effect as taking the programs off-budget. Subsequent action on H.R. 1000 (which became AIR21), however, dropped the firewall approach and substituted off-budget provisions. These provisions were complimented by other budgetary devices intended to adjust aviation program spending to levels corresponding to annual trust fund revenues.

Budget Provisions in H.R. 1000 as Considered by the House

H.R. 1000 as passed by the House on June 15, 1999, would, according to CBO “take the trust fund off-budget and exempt airport and airway trust fund spending from discretionary spending caps, pay-as-you-go procedures and congressional budget controls.”³

The bill also contained additional budget provisions that would further affect the annual aviation funding process. Most significant among these are provisions that “cap” the annual general fund contribution and a mechanism that provides additional funding for AIP based on trust fund revenues and aviation program spending. The “cap” which could be viewed as somewhat of a guarantee, except in FY2000, has the effect of setting the general fund contribution at a level that equates to the contribution in FY1998 (\$3.351 billion).

From the perspective of the promoters of AIR21 the off-budget provisions made full funding of aviation programs more likely in the context of the annual budget and

²GRA, Incorporated. *A Cost Allocation Study of FAA's FY1995 Costs*. Final Report. March 19, 1997. Prepared for: FAA Office of Aviation Policy and Plans.

³Congressional Budget Office. *Cost Estimate*. H.R. 1000. May 28, 1999.

appropriations process. AIR21 programs remain subject to appropriations. For the Appropriations and Budget Committees, however, there would appear to be little incentive to change any AIR21 funding authorizations because these changes would have no effect on the annual congressional budget. The promoters of this legislation also contended that it was not a threat to other federal transportation programs and that; “Any budget increase would be outside the caps and would be fully paid for by the aviation taxes deposited into the Aviation Trust Fund. For this reason, passage of AIR 21 will not cause reductions in any other programs.”⁴

Opponents of the bill believed that H.R. 1000 could lead to a “balkanization” of the unified budget process as each programmatic interest seeks special budget provisions for its activities. There is also a concern that annual FAA program oversight by the appropriations process will be somewhat limited. In this regard, opponents specifically point to the FAA as an agency that has had a lot of difficulty getting projects accomplished on time and on budget.

AIR21

AIR21 contains neither an off-budget provision or a TEA21 style spending guarantee. Instead, the agreement substitutes a spending “guarantee” that requires spending the total budget resources of the aviation trust fund for aviation purposes on an annual basis. Enforcement of the guarantee relies on changes to House and Senate point-of-order rules. The Agreement uses a two step process to facilitate the guarantee. First, Title 1, Section 106 (c)(1) makes it out-of-order for either Body to consider legislation that first does not spend all aviation trust fund revenues for the aviation purposes authorized by the Agreement. Second, Title 1, Section 106 (c)(2) makes it out-of-order for either body to consider legislation providing sums for Research and Development, and Operations, if spending for AIP and F&E are below the levels authorized by AIR21.

These guarantees do not appear to be as strident as those created by TEA21 which created new budget categories for the highway and transit accounts of the highway trust fund. The point-of-order changes, none-the-less, give those seeking full funding of aviation programs a tool to preclude redistribution of aviation trust fund revenues to other budget categories.

⁴[<http://www.house.gov/transportation/press/presss99.htm>]

Table 1. Balances of the Airport and Airway Trust Fund, FY1989-FY1999 (in millions of dollars)

| | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 ^c | 1997 | 1998 | 1999 |
|--|---------------|---------------|---------------|---------------|--------------------------|---------------|---------------|-------------------|--------------|--------------|---------------|
| Trust Fund Income | | | | | | | | | | | |
| Passenger Ticket Tax (includes segment tax beginning FY1998) | 3,201 | 3,219 | 4,341 | 4,012 | 4,472 | 4,528 | 4,768 | 2,123 | 3,389 | 6,002 | 7,280 |
| Waybill Tax | 181 | 178 | 222 | 249 | 255 | 284 | 361 | 151 | 331 | 313 | 412 |
| Fuel Tax | 629 | 141 | 140 | 167 | 121 | 187 | 211 | 3 | 128 | 659 | 1,009 |
| International Departure/Arrival Tax | 106 | 181 | 217 | 231 | 223 | 218 | 233 | 128 | 194 | 948 | 1,484 |
| Total Tax Revenue^a | 3,665 | 3,700 | 4,910 | 4,644 | 3,261 | 5,217 | 5,573 | 2,369 | 4,027 | 8,153 | 10,423 |
| Interest on Investments | 1,009 | 1,245 | 1,297 | 1,273 | 1,040 | 837 | 757 | 759 | 481 | 543 | 698 |
| Total Trust Fund Income^b | 4,674 | 4,945 | 6,206 | 5,918 | 4,302^b | 6,082 | 6,363 | 3,209 | 4,508 | 8,696 | 11,121 |
| Federal Aviation Administration Appropriations | | | | | | | | | | | |
| Airport Grants-in-aid | 1,400 | 1,425 | 1,800 | 1,900 | 1,800 | 1,690 | 1,450 | 1,450 | 1,460 | 1,700 | 1,565 |
| Facilities & Equipment | 1,384 | 1,721 | 2,095 | 2,409 | 2,302 | 2,055 | 1,960 | 1,855 | 1,938 | 1,901 | 2,195 |
| Research, Engineering, & Development | 160 | 170 | 205 | 218 | 230 | 254 | 252 | 186 | 208 | 199 | 174 |
| Operations & Maintenance (Trust Fund) | 471 | 807 | 2,003 | 2,110 | 2,279 | 2,295 | 2,450 | 2,223 | 1,700 | 1,902 | 4,122 |
| Operations & Maintenance (General Fund) | 2,974 | 3,017 | 2,034 | 2,250 | 2,251 | 2,285 | 2,122 | 2,420 | 3,255 | 3,435 | 1,474 |
| Total Expenditures | 6,389 | 7,141 | 8,137 | 8,887 | 8,862 | 8,578 | 8,234 | 8,134 | 8,561 | 9,136 | 8,089 |
| Percent of Expenditures from General Fund | 47 | 42 | 25 | 25 | 25 | 27 | 26 | 30 | 38 | 38 | 0 |
| Trust Fund Balances | | | | | | | | | | | |
| Unexpended Balance, Start of Year | 11,120 | 12,938 | 14,355 | 15,263 | 15,203 | 12,851 | 12,386 | 11,365 | 7,692 | 6,358 | 9,411 |
| Unexpended Balance, End of Year | 12,938 | 14,355 | 15,263 | 15,204 | 12,850 | 12,386 | 11,365 | 7,875 | 6,442 | 9,140 | 12,446 |

^a Includes frequent flyer tax, rural airports tax, refunds of taxes and offsetting collections.^b Includes offsetting collections and additional payments. In FY1993, \$1,795 million were transferred to the general funds (P.L. 102-581).^c All trust fund activities for FY1996 are affected by the lapse in revenue collection authority during the January - August 1996 period.Source: U.S. Government. Office of Management and Budget. *Budget of the United States Government*, various years.